

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Petition for Declaratory Ruling that AT&T's)	WC Docket No. 02-361
Phone-to-Phone IP Telephony Services Are)	
Exempt from Access Charges)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

JEFFRY A. BRUEGGEMAN
GARY L. PHILLIPS
PAUL K. MANCINI

SBC COMMUNICATIONS INC.
1401 Eye Street, NW
Suite 400
Washington, D.C. 20005
202-326-8911 – phone
202-408-8745 - facsimile

Its Attorneys

January 24, 2003

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. THE COMMISSION SHOULD MINIMIZE UNCERTAINTY BY CONFIRMING THE APPLICATION OF ITS ACCESS RULES TO IP TELEPHONY SERVICES .	5
III. THERE IS NO BLANKET EXEMPTION FROM SWITCHED ACCESS CHARGES FOR IP TELEPHONY SERVICES	10
IV THE COMMISSION MUST CONSIDER ALL OF THE POLICY IMPLICATIONS OF EXEMPTING IP TELEPHONY SERVICES FROM SWITCHED ACCESS CHARGES	14
V. CONCLUSION	17

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling that AT&T's)	WC Docket No. 02-361
Phone-to-Phone IP Telephony Services Are)	
Exempt from Access Charges)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications (SBC) hereby submits its reply comments regarding the above-referenced Petition For Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges.¹ The comments filed in this proceeding confirm that Internet protocol (IP) telephony providers are seeking a blanket exemption from switched access charges for *any* service that is provided using an IP backbone, even if such service clearly satisfies the statutory definition of a "telecommunications service." SBC and others have demonstrated that nothing in the law or the Commission's prior decisions supports this attempt to evade lawfully imposed switched access charges. Moreover, the extraordinarily broad declaratory ruling requested by AT&T would accelerate the rampant arbitrage of switched access charges that is already occurring and undermine the Commission's access charge regime.

I. INTRODUCTION AND SUMMARY

SBC has an incentive to take a balanced approach to the issue of the proper application of switched access charges to IP telephony services. In addition to being a large ILEC, SBC is one

¹ Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges filed on October 18, 2002 (Petition).

of the nation's largest IXC. Since receiving authorization to provide long distance services in California a few weeks ago, SBC now operates as an IXC in seven states and it has applications for section 271 relief pending in two additional states. SBC pays access charges whenever its long distance traffic originates or terminates on a LEC's network, so it has a direct interest in access charges incurred by IXCs. Moreover, SBC is a major provider of Internet access and other IP-based services, and it increasingly delivers services to its customers over an IP-based network. Thus, as with other providers that have diverse interests at stake in this proceeding, SBC strongly desires confirmation of the Commission's rules so it does not continue to pay switched access charges for the same types of IP telephony services that other providers claim are exempt from such charges.

There is widespread consensus among commenters that the Commission should minimize uncertainty regarding the application of switched access charges to IP telephony services.² Most of the uncertainty that currently exists, however, is entirely the result of AT&T's and other IP telephony provider's aggressive actions to avoid such charges. The Commission can remove this uncertainty by confirming that its existing access charge rules apply to IP telephony services as follows:

- *All IP telephony services, whether they are classified as "telecommunications services" or "information services," are subject to switched access charges for the delivery of calls to non-IP telephony subscribers served by the public switched telephone network (PSTN). As illustrated in Attachment A hereto, IP telephony subscribers are not exempt from paying switched access charges for delivering interstate calls from their own gateways to non-subscribers served by the PSTN, which is much different than originating or terminating traffic to their own subscribers. And they should not be permitted to purchase local business services or route traffic through a complicit CLEC in order to*

² See, e.g., Association for Telecommunications Enterprises (ASCENT) *et al.* Comments at 11-15; American Internet Service Providers Association (AISPA) *et al.* Comments at 16-23; Sprint Comments at 9-14; Level 3 Comments at 19.

access ILEC networks *on a LATA-wide basis* without paying applicable switched access charges.

- Phone-to-phone IP telephony services, such as those being offered by AT&T, are clearly “telecommunications services” and thus are subject to switched access charges when the PSTN is used to originate and terminate calls to *IP telephony subscribers*.
- IP telephony services offered over a broadband connection do not use the PSTN to originate or terminate calls to the IP Telephony’s subscribers. As a result, these services are not subject to switched access charges for the origination or termination of calls to *IP telephony subscribers*.
- In those rare instances where an IP telephony service is offered as an information service and uses the PSTN to originate or terminate calls to IP telephony subscribers, such service is exempt from switched access charges that would otherwise apply for the origination or termination of calls to *IP telephony subscribers*.

These reaffirmations of the Commission’s rules will likely resolve the majority of disputes regarding the application of switched access charges to IP telephony services.

Application of the Commission’s existing access charge rules to IP telephony services produces the correct policy result. The Commission will not be extending its access charge regime to information services, but neither will it be granting preferential treatment to IP telephony service providers when they use the PSTN in the same manner as traditional circuit-switched IXC’s. At the same time, the Commission will be advancing an important policy interest by ensuring the integrity of its access charge regime and helping to prevent IP telephony providers from engaging in the types of deceptive practices AT&T described in its Petition. If, on the other hand, the Commission continues to allow IXC’s to evade switched access charges simply by routing their traffic over an IP backbone, it will have disastrous consequences for the Commission’s access charge regime.

Not surprisingly, AT&T’s Petition is supported by a number of IP telephony providers and CLEC’s that receive a financial windfall and a competitive advantage by avoiding payment of switched access charges when they use the PSTN to originate or terminate interstate calls in the

same manner as traditional circuit-switched IXCs.³ AT&T's supporters avoid discussing the nature and configuration of their IP telephony services and the Commission's longstanding standard for classifying a service as either a "telecommunications service" or an "information service." Instead, they argue that the Commission has classified or should classify all IP telephony services as information services.⁴ Further, AT&T's supporters conveniently ignore the Commission's existing access charge rules, which provide that all interstate telecommunications services that make use of the PSTN are subject to switched access charges.⁵ Instead, they wrongly claim that the Commission has imposed a "moratorium" or "presumptive exemption" from access charges for all IP telephony services,⁶ or that the ESP exemption establishes a blanket exemption from access charges for all IP telephony services.⁷ Not only do AT&T's supporters mischaracterize Commission precedent, but they also attempt to transform the Commission's general discussions regarding IP telephony issues in the *Universal Service Report to Congress* into a rulemaking decision that resulted in a significant modification of its existing access charge regime.

AT&T's supporters also seek to force the Commission's hand by arguing that a blanket exemption from switched access charges is compelled by the Commission's policy of allowing IP telephony services to develop in a deregulatory environment.⁸ But the Commission cannot

³ See generally AISPA *et al.* Comments; ASENT *et al.* Comments; Net2Phone Comments.

⁴ Net2Phone Comments at 4; AISPA *et al.* Comments at 8; ASCENT *et al.* Comments at 20.

⁵ 47 C.F.R. § 69.5.

⁶ VON Coalition Comments at 11; ASCENT *et al.* Comments at 15.

⁷ AISPA *et al.* Comments at 11.

⁸ ASCENT *et al.* Comments at 17-18; VON Coalition Comments at 10-11.

confuse its policy goal of promoting the development of the Internet with the financial interest that IP telephony providers have in avoiding switched access charges. The Commission's policy objective, as codified by Congress in section 706 of the 1996 Act, is to promote the development of the Internet and the deployment of advanced services "without regard to any transmission media or technology." There is no policy justification for granting IP telephony providers preferential treatment with respect to switched access charges when they use the PSTN to originate or terminate calls in the same manner as traditional circuit-switched IXCs. Nor does the Commission have a legitimate policy interest in subsidizing basic phone-to-phone services that happen to make use of an IP backbone.

II. THE COMMISSION SHOULD MINIMIZE UNCERTAINTY BY CONFIRMING THE APPLICATION OF ITS ACCESS CHARGE RULES TO IP TELEPHONY SERVICES.

Most of the uncertainty that currently exists regarding the application of switched access charges to IP telephony services is entirely the result of AT&T's and other IP telephony providers' aggressive actions to avoid such charges. Therefore, it is utterly disingenuous of AT&T's supporters to argue that the Commission must now remove the uncertainty they have created by establishing a blanket exemption from switched access charges for IP telephony providers.⁹ These self-serving requests for the Commission's endorsement of various deceptive practices that IP telephony providers are engaging in would not achieve regulatory certainty, but instead would exacerbate competitive distortions in the market and undermine the stability of the Commission's access charge regime.

A much better solution is for the Commission to confirm the application of its existing access charge rules to IP telephony services. The Commission can remove much of the

⁹ ASCENT *et al.* Comments at 24.

uncertainty that AT&T and others have created by confirming that *all* IP telephony services — regardless of whether they are classified as “telecommunications services” or “information services” — are subject to switched access charges for calls delivered to *non-IP telephony subscribers* served by the PSTN. As SBC discussed in its Opposition, the scope of the exemption from switched access charges that exists for information services is limited to switched access charges that would otherwise apply for traffic that originates and terminates with an information service provider’s (ISP’s) subscribers. The Commission’s rationale for maintaining the ESP exemption has been that ISPs should not be subject to switched access charges “solely because ISPs use incumbent LEC networks *to receive calls from their customers*.”¹⁰

As Attachment A illustrates, IP telephony providers are claiming a blanket exemption from switched access charges that extends far beyond the limited scope of the ESP exemption. They are refusing to pay switched access charges for delivering calls from their own gateways to non-subscribers served by the PSTN. In effect, AT&T and other IP telephony providers are seeking a dramatic expansion of the ESP exemption that would allow them to avoid switched access charges when they use the PSTN as part of their service architecture to originate or terminate traffic to *non-subscribers*. This use of the PSTN is identical to that of traditional IXC. Unlike traditional circuit-switched IXCs, however, IP telephony providers are claiming a right to purchase local business services or route traffic through a complicit CLEC in order to access the

¹⁰ *Access Charge Reform et al.*, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 15,982, ¶ 343 (1997) (emphasis added); *see also MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 F.C.C.2d 682, ¶ 79 (1983) (noting that an enhanced service provider uses local exchange service and facilities “to access its customers”).

ILEC networks on a LATA-wide basis without paying applicable switched access charges. The Commission never intended for the ESP exemption to be misused in this manner.

The regulatory classification of IP telephony services has no bearing on the payment of switched access charges for delivering calls to non-subscribers served by the PSTN, but it is relevant to determining the application of switched access charges when an IP telephony provider uses the PSTN to originate or terminate traffic to its *own subscribers*. The Commission can minimize uncertainty and eliminate most disputes by clarifying that phone-to-phone services, such as those being offered by AT&T, are clearly “telecommunications services” and thus are always subject to access charges when the PSTN is used to originate or terminate calls to IP telephony subscribers. As SBC discussed in its Opposition, AT&T’s services are identical to the types of phone-to-phone IP telephony services that the Commission tentatively concluded resemble telecommunications services in its *Universal Service Report to Congress*.¹¹ From an end user’s perspective, AT&T’s stand-alone phone-to-phone services provide the same basic voice transmission capability as a traditional circuit-switched telephone call and bear no resemblance to Internet access services that the Commission has classified as information services. Thus, there is no basis for concluding that phone-to-phone services, are exempt from switched access charges because they happen to be provided over an IP backbone.

Under the Commission’s existing rules, IP telephony services that are offered as information services are exempt from switched access charges for originating and terminating traffic to their own subscribers. Of course, those IP telephony services that do not use the PSTN also do not pay switched access charges for the origination and termination of calls to IP

¹¹ SBC Opposition at 6-7 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11,501, ¶¶ 84-89 (1998) (*Universal Service Report to Congress*)).

telephony subscribers. Only if an IP telephony provider elects to offer a telecommunications service and uses the PSTN to originate and terminate calls to its own subscribers does it become subject to switched access charges. This bright-line rule provides the regulatory certainty that commenters desire without dramatically expanding the scope of the ESP exemption.

By confirming its tentative conclusion that phone-to-phone services such as those being offered by AT&T are telecommunications services, the Commission will likely resolve the majority of disputes regarding the application of switched access charges to IP telephony services. With the exception of phone-to-phone services, most IP telephony services will be offered over a broadband connection (in which case the PSTN is not even being used in the provision of IP telephony service). Thus, the Commission can minimize uncertainty and avoid contentious disputes simply by confirming the application of its existing access charge rules to IP telephony services.

Because the general rule is that all interstate telecommunications services that use the PSTN are subject to access charges, the burden should be on IP telephony providers to demonstrate that they are *not* subject to switched access charges in connection with their use of the PSTN. The Commission's access charge regime would be turned on its head if ILECs were required to prove that the general rule applies, rather than the exemption. Further, as a practical matter, IP telephony providers are obviously best positioned to determine the nature of the services they are offering. Shifting the burden to the ILEC to prove that it is entitled to receive switched access charges would result in protracted disputes and would be more likely to necessitate Commission intervention. If a dispute does arise regarding the proper classification of a IP telephony service, which as explained above should be a relatively rare occurrence, then

the Commission can resolve it based on the particular characteristics of the IP telephony service at issue.

The application of the Commission's existing access charge rules to IP telephony services produces the correct policy result. The Commission will not be extending its access charge regime to information services, but neither will it be granting preferential treatment to IP telephony service providers when they use the PSTN in the same manner as traditional circuit-switched IXCs. As a result, the Commission will be promoting the deployment of IP telephony services in a manner that is competitively and technologically neutral. This is consistent with section 706, which directs the Commission to promote the deployment of advanced services "without regard to any transmission media or technology." It also is consistent with the Commission's policy, most recently expressed in its pending broadband proceedings, of seeking to "create a rational framework for the regulation of competing services that are provided via different technologies and network architectures."¹²

Moreover, the Commission has an important policy interest in ensuring the integrity of its access charge regime and preventing IP telephony providers from engaging in various deceptive practices to avoid lawfully imposed switched access charges. AT&T's Petition documented some of these deceptive practices, such as disguising the jurisdictional nature of traffic routed through a CLEC and stripping off CPN information, when calls are delivered to ILEC networks. Rural LECs and state commissions echo SBC's concern that sanctioning the deceptive practices AT&T and others are engaging in will accelerate the erosion access charges, which are an

¹² *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185 and CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 6 (2002).

important source of implicit subsidies that are used to maintain universal service.¹³ IP telephony providers may choose to ignore the far-reaching consequences of the preferential treatment they are seeking, but the Commission may not.

Contrary to the claims of IP telephony providers, ILECs are *not* adequately compensated for use of the PSTN when an IP telephony provider purchases local business services or routes traffic through a CLEC.¹⁴ As previously discussed, IP telephony providers are not using local business services to serve their own subscribers, as the ESP exemption envisions. Rather, they are purchasing local business services or routing traffic through a CLEC to obtain LATA-wide access to ILEC networks. The end result is that IP telephony providers are able to avoid switched access charges when they deliver traffic to potentially thousands of non-subscribers served by the PSTN. It is inconceivable that the Commission had this type of rampant access charge avoidance in mind when it established the limited exemption from access charges for ISPs serving their own customers.

III. THERE IS NO BLANKET EXEMPTION FROM SWITCHED ACCESS CHARGES FOR IP TELEPHONY SERVICES

IP telephony providers claim that LECs are engaging in impermissible self-help by attempting to collect switched access charges for long distance traffic that happens to be provided using an IP backbone.¹⁵ Of course, this argument assumes the legitimacy of their erroneous view that the Commission's existing access charge rules do not apply to IP telephony

¹³ See, e.g., New Hampshire Public Utilities Commission Comments at 5; New York State Department of Public Service Comments at 6-7; Rural Iowa Independent Telephone Association Comments at 2-3; National Exchange Carrier Association Comments at 5-6.

¹⁴ See AISPA *et al.* Comments at 10.

¹⁵ See, e.g., AISPA *et al.* Comments at 20.

services. As SBC demonstrated in its Opposition, however, IP telephony providers do not enjoy a blanket exemption from switched access charges. The impermissible self-help that the Commission should eliminate in this proceeding are the various deceptive practices, such as purchasing local business services instead of access services and disguising the jurisdictional nature of traffic that is routed through a CLEC, that AT&T and other IP telephony providers are engaging in to avoid switched access charges. These activities are plainly unlawful under the Commission's existing rules.

AT&T's Petition is supported by a number of IP telephony providers and CLECs that receive a financial windfall and a competitive advantage by avoiding payment of switched access charges when they use the PSTN to originate or terminate interstate calls in the same manner as traditional circuit-switched IXCs.¹⁶ These comments are most notable for what they do *not* discuss. AT&T's supporters avoid discussing the nature and configuration of their IP telephony services and the Commission's longstanding standard for classifying a service as either a "telecommunications service" or an "information service." Instead, some IP providers argue that the Commission has classified all IP telephony services as information services.¹⁷ The Commission reached exactly the opposite conclusion in the *Universal Service Report to Congress*. Specifically, the Commission recognized that the regulatory classification of IP telephony services depends on the configuration of individual service offerings, and it tentatively concluded that some types of IP telephony providers resemble telecommunications services, not information services.¹⁸

¹⁶ See, e.g., ASENT *et al.* Comments, AISPA *et al.* Comments, Net2Phone Comments.

¹⁷ Net2Phone Comments at 4; AISPA *et al.* Comments at 4.

¹⁸ *Universal Service Report to Congress*, ¶¶ 89-90; see also *Independent Data Communications Manufacturers Association, Inc. Petition for Declaratory Ruling that AT&T's InterSpan Frame*

Other AT&T supporters argue that the Commission should classify all IP telephony services as information services because they are *capable* of being combined with enhanced, data or video offerings.¹⁹ By that standard, any telecommunications service that could be used in the provision of an information service would be categorized as an information service, even when it is offered on a stand-alone basis. Such a regulatory classification scheme would eviscerate the statutory definitions of the terms “telecommunications service” and “information service,” since all information services are, by definition, provided via telecommunications. It also would reverse almost thirty years of Commission precedent classifying services based on the service actually offered to end-user customers. The Commission must reject the transparent attempts of IP telephony providers to distance themselves from the characteristics of their own service offerings and claim a blanket exemption from access charges for all IP telephony services, regardless of how they are classified.

AT&T’s supporters also conveniently ignore the Commission’s existing access charge rules, which provide that all interstate telecommunications services that make use of the PSTN are subject to switched access charges under the Commission’s rules.²⁰ Instead, they wrongly claim that the Commission has imposed a “moratorium” or “presumptive exemption” from

Relay Service Is a Basic Service et al., Memorandum Opinion and Order, 10 FCC Rcd 13717, ¶ 11 (1995) (“The use of packet switching and error control techniques ‘that facilitate the economical, reliable movement of [such] information [do] not alter the nature of the basic service.’”).

¹⁹ AISPA *et al.* Comments at 8. ASCENT makes a similar argument that no IP telephony service should be subject to access charges because the Commission cannot conclude that any IP telephony services are *never* enhanced. ASCENT *et al.* Comments at 20. This tortured logic also would result in most, if not all, telecommunications services being classified as information services.

²⁰ 47 C.F.R. § 69.5.

access charges for all IP telephony services.²¹ No such moratorium or presumptive exemption exists anywhere in the Commission's rules or prior decisions.

Further, the ESP exemption provides no support for AT&T's and other IP telephony providers' position that there is a blanket exemption from access charges for all IP telephony services.²² IP telephony providers consistently gloss over the fact that the ESP exemption applies only to information services and not to IP telephony services that are offered as telecommunications services. In addition, as previously discussed, the ESP exemption applies only to switched access charges that would otherwise apply for traffic that originates and terminates with an ISP's own subscribers. Given the presumption that access charges apply unless a service falls within the limited scope of the ESP exemption, the burden should be on IP telephony providers to demonstrate that they are not subject to switched access charges in connection with their use of the PSTN.

Not only do AT&T's supporters mischaracterize Commission precedent, but they also attempt to transform the Commission's general discussions regarding IP telephony issues in the *Universal Service Report to Congress* into a rulemaking decision that resulted in a significant modification of its existing access charge regime. The Commission's decision does not support their argument. The Commission did not even discuss the ESP exemption in the context of IP telephony services in the *Universal Service Report to Congress*, let alone announce that it was creating a new blanket exemption from switched access charges for all IP telephony services. Moreover, the fact that the Commission discussed the possibility of exercising its section 10 forbearance authority or establishing a unique access regime for IP telephony services provides

²¹ VON Coalition Comments at 11; ASCENT *et al.* Comments at 15.

²² AISPA *et al.* Comments at 11.

further proof that the *Universal Service Report to Congress* was not a rulemaking decision that implemented a significant modification of its existing access charge regime.

It also should be noted that the *Universal Service Report to Congress* is now five years old, so the Commission's analysis is dated even as a general policy discussion. Due to the proliferation of IP networks, almost any service could now be provisioned in such a way that it meets a loose definition of the term "IP telephony service." Thus, a blanket exemption from switched access charges for IP telephony services would have implications far beyond what the Commission considered back in 1998.

IV. THE COMMISSION MUST CONSIDER ALL OF THE POLICY IMPLICATIONS OF EXEMPTING IP TELEPHONY SERVICES FROM SWITCHED ACCESS CHARGES.

Some IP telephony providers argue that a blanket exemption from access charges is compelled by the Commission's policy of allowing IP telephony services to develop in a deregulatory environment.²³ But the Commission cannot confuse its policy goal of promoting the development of the Internet with the financial interest that IP telephony providers have in avoiding access charges. The assessment of access charges has nothing to do with the regulation of IP networks or IP telephony services. In addition, under the Commission's existing rules, access charges apply only to the extent an IP telephony provider elects to configure its service so that it uses the PSTN. An "off network" IP telephony service that does not use the PSTN remains completely outside of the Commission's access charge regime.

The creation of a blanket exemption from access charges for IP telephony services would not be a legitimate means of promoting the development of the Internet, as some IP telephony providers claim. The Commission's policy objective, as codified by Congress in section 706 of

²³ ASCENT *et al.* Comments at 17-18; VON Coalition Comments at 10-11.

the 1996 Act, is to promote the development of the Internet and the deployment of advanced services “without regard to any transmission media or technology.” There is no policy justification for promoting the deployment of IP telephony services as a mechanism for avoiding access charges. It is not in the public interest to force local exchange customers to bankroll the offerings of IP telephony providers by creating a new subsidy mechanism in this proceeding.

Nor does the Commission have a legitimate policy interest in subsidizing basic phone-to-phone services, such as those being offered by AT&T, that happen to make use of an IP backbone. It is not even clear that AT&T is truly using the Internet in its provision of IP telephony service, as opposed to merely creating a virtual private network over the same backbone facilities that are also used to carry Internet traffic. Yet AT&T and other IP telephony providers would have the Commission equate “IP protocol” with “Internet” in order to justify the financial windfall they are seeking. Instead of granting AT&T’s self-serving Petition, the most effective way for the Commission to spur the development of the Internet would be to take decisive action in its pending broadband proceedings to eliminate burdensome regulation that hinders ILEC deployment of broadband Internet services and distorts competition in the broadband market.

The prior statements of Chairman Powell and Commissioner Martin cannot be read as endorsing a blanket exemption from access charges for IP telephony providers. Chairman Powell’s support for deregulation and market forces as an effective way of encouraging innovation in IP telephony has nothing to do with the payment of access charges when an IP telephony provider uses the PSTN to deliver calls to non-subscribers.²⁴ Likewise, Commissioner

²⁴ See VON Coalition Comments at 7; AISPA *et al.* Comments at 15-16.

Martin's concern about intervening prematurely in the context of IP telephony surely cannot be read as supporting a dramatic expansion of the limited exemption from access charges that exists for information service providers.²⁵ In short, there is no policy justification for granting IP telephony providers preferential treatment with respect to access charges when they use the PSTN to originate or terminate calls in the same manner as traditional circuit switched IXCs.

The Commission should address the broader regulatory implications of IP telephony services in its pending *Intercarrier Compensation* proceeding.²⁶ In particular, the Commission should eliminate the artificial distinction among various types of intercarrier compensation regimes (*i.e.*, interstate access, intrastate access and reciprocal compensation) and establish a uniform bill and keep regime for all types of traffic. The Commission has not proposed, and SBC would strongly oppose, establishment of an exemption or unique compensation structure for IP telephony providers. Even AT&T recognizes that the Commission's intercarrier compensation regime should be competitively neutral, so that all providers and technology platforms are subject to the same set of rules.²⁷ In a uniform bill and keep regime, customers will no longer have an incentive to migrate their traffic to IP networks solely for the purpose of avoiding access charges.

While proper application of the Commission's access charge rules should minimize disputes about the regulatory classification of IP telephony services, SBC believes the Commission should make affirmative policy determinations about the regulatory status of IP

²⁵ See VON Coalition Comments at 7-8; AISPA *et al.* Comments at 16.

²⁶ Level 3 Comments at 19; Qwest Comments at 22-23; National Telecommunications Cooperative Association Comments at 1-2.

²⁷ Petition at 33.

telephony services. It should not be the Commission's policy to deliberately foster uncertainty about its existing rules as a means of achieving deregulation. Therefore, in addition to confirming the application of its existing access charge rules to IP telephony services, the Commission should initiate a proceeding to determine the regulatory framework that should apply to IP telephony services offered as telecommunications services.

In the absence of such clarification, IP telephony providers are taking advantage of the resulting uncertainty to gain a competitive advantage in the market. For example, some IP telephony providers appear to be taking the position that they are completely exempt from universal service contributions.²⁸ Those IP telephony providers enjoy a seven percent or more cost advantage compared to traditional circuit-switched providers by virtue of their position that they are outside the universal service contribution base. They also enjoy a seven percent or more cost advantage compared to AT&T and other IP telephony providers that do contribute to universal service. As this example illustrates, no provider should be in favor of an ill-defined regulatory regime in which competing providers may seek to gain a competitive advantage by exploiting perceived loopholes in the rules. The Commission's goal should be to have rules that are clear, as well as competitively neutral.

V. CONCLUSION

SBC has an incentive to take a balanced approach to the issue of the proper application of access charges to IP telephony services. The best way for the Commission to provide the certainty that commenters uniformly desire is by confirming the application of its existing access charge rules to IP telephony services. In particular, the Commission should confirm that IP

²⁸ ASCENT *et al.* Comments at 10-11.

telephony providers, regardless of how they are classified, are not exempt from paying switched access charges for calls delivered to non-IP telephony subscribers served by the PSTN. In addition, the Commission should confirm that all telecommunications services are subject to switched access charges when they make use of the PSTN, even if such services happen to be provisioned over an IP backbone.

Unlike SBC, AT&T and other IP telephony providers are motivated to advance any argument, no matter how preposterous, that will reduce or eliminate their obligation to pay lawfully imposed switched access charges. Contrary to the arguments raised by some IP telephony providers, the Commission has not and could not classify all IP telephony services as information services. Nor has the Commission created either a blanket exemption or a presumptive exemption from access charges for IP telephony services. The Commission should reject these baseless arguments and maintain the integrity of its access charge regime by confirming that the types of deceptive practices AT&T and others are engaging in to avoid access charges are unlawful.

The Commission also must implement a long-term solution by addressing IP telephony issues as part of the pending *Intercarrier Compensation* proceeding. A bill and keep regime that applies to traditional circuit-switched services and IP telephony services alike will provide an intercarrier compensation structure that is competitively neutral. The Commission must recognize that its existing access charge regime is not sustainable in the rapidly evolving telecommunications market, even if the Commission takes decisive action in this proceeding to help prevent the unlawful access avoidance activities that are occurring.

Respectfully Submitted,

/s/ Jeffry A. Brueggeman

Jeffry A. Brueggeman

Gary L. Phillips

Paul K. Mancini

SBC COMMUNICATIONS INC.

1401 I Street NW 4th Floor

Washington, D.C. 20005

202-326-8911 – phone

202-408-8745 - facsimile

Its Attorneys

January 24, 2003

Attachment A



IP Telephony Subscriber

Non-IP Telephony Subscribers

